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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

WANG, LIANG CHE A

ART UNIT

PAPER NUMBER

2155

DATE MAILED: 08/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/961,282	Applicant(s) YASUSHI ET AL.	
	Examiner Liang-che Alex Wang	Art Unit 2155	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) .
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

1. Claims 1-17 have been examined.

Response to Arguments

2. Applicant's arguments filed 03/25/2003, have been fully considered but they are not persuasive.
3. In that remarks, applicant's argues in substance:
 - a. That: Lemilainen does not teach or suggest each of the claimed features, for example, claim 1, "selecting means for selecting one of said plurality of radio transmitting/receiving devices in accordance with a data type of data signal to be transmitted or received", and claim 11 "selecting one of a plurality of radio transmitting/receiving devices which are different at least in data communication speed from one another in accordance with a data type of data signal to be transmitted or received." Lemilainen does not distinguish based on the data type, but instead of focuses on the quality of the transmission so as to manipulate the data transmission network to obtain the best possible connection.

This is not found persuasive because Lemilainen does teach selecting the transmitting/receiving device in accordance with the connection qualities (Col 13 line 66 –Col 14 line 2, Col 3 lines 30-37) and Lemilainen also states that there are different types of networks, and each network is providing different transmissions (Col 3 lines 19-24, 30-42), each transmission type corresponds to a data type of data signal (for example, Ethernet, GSM are different data type of data signal).

Therefore Lemilainen teaches Lemilainen does distinguish based on the data type and Lemilainen also teaches selecting means for selecting one of said plurality of radio transmitting/receiving devices in accordance with a data type of data signal to be transmitted or received (Col 2 line 66 – Col 3 line 3, lines 19-25, 38-42, Col 13 line 66 –Col 14 line 2); and selecting one of a plurality of radio transmitting/receiving devices which are different at least in data communication speed from one another in accordance with a data type of data signal to be transmitted or received (Col 2 line 66 – Col 3 line 3, lines 19-25, 38-42, Col 13 line 66 –Col 14 line 2).

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

5. Claims 1, 3, 8, 11, 12, 14 and 15 are rejected under 35 U.S.C. 102(e) as being anticipated by Lemilainen et al., US Patent Number 6,681,259 hereinafter Lemilainen.
6. Referring to claim 1, Lemilainen has taught a mobile communication device (item A, figure 1) for communicating data through a predetermined network line (see figure 6), comprising:
 - a. a plurality of radio transmitting/receiving devices which are different at least in data communication speed from one another (figure 7, item D1, D2, D3);
 - b. selecting means (Col 9 lines 59-62) for selecting one of said plurality of radio transmitting/receiving devices in accordance with a data type of data signal to be transmitted or received (Col 2 line 66 – Col 3 line 3, lines 19-25, 38-42, Col 13 line 66 – Col 14 line 2); and
 - c. control means for controlling data communication by the one radio transmitting/receiving device selected by said selecting means (Col 3 lines 30-38, Col 5 lines 15-18, Col 10 lines 6-11).
7. Referring to claim 3, Lemilainen has taught an invention as described in claim 1, and has further taught wherein said selecting means selects a radio transmitting/ receiving device which is relatively available for communication at all times from said plurality of radio transmitting/ receiving devices as said one radio transmitting/ receiving device when the data signal to be transmitted or received indicates emergency information which should be urgently communicated (Col 3 lines 33-38)
8. Referring to claim 8, Lemilainen has further taught wherein said predetermined network line is the Internet (Figure 7 and Col 6 lines 42-49.)

9. Referring to claim 11, Lemilainen has taught a mobile communicating method for communicating data through a predetermined network line (see figure 6), comprising the steps of:
- a. selecting one of a plurality of radio transmitting/receiving devices which are different at least in data communication speed from one another in accordance with a data type of data signal to be transmitted or received (Col 2 line 66 – Col 3 lines 19-25, 38-42, Col 9 lines 59-62); and
 - b. controlling a data communication by the selected one radio transmitting/receiving device (Col 3 lines 30-38, Col 5 lines 15-18, Col 10 lines 6-11).
10. Referring to Claims 12, 14, and 15, Claims 12, 14 and 15 encompasses the same scope of the invention as that of the Claims 1, 3, 8. Therefore, the Claims 12, 14, and 15 are rejected for the same reason as the Claims 1, 3, and 8.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
12. Claims 2, 4-5, 7, 10, 13 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lemilainen et al., US Patent Number 6,681,259 hereinafter Lemilainen.
13. Referring to claim 2, Lemilainen has taught an invention as described in claim 1, and has further taught wherein said selecting means selects a radio transmitting/ receiving device

Art Unit: 2155

having a better data communication quality from said plurality of radio transmitting/receiving devices as said one radio transmitting/ receiving device (Col 3 lines 30-33, and Col 10 lines 31-50).

Although Lemilainen has not explicitly taught selecting the higher speed when the data signal to be transmitted or received has a relatively large data size. However, it is obvious to a person with ordinary skill in the art the time the invention was made to understand the best possible quality connection as taught by Lemilainen (Col 3 lines 30-33) could be the fastest speed available for transferring a large size file in order to provide the best possible quality connection. Because having the large file being transferred with a higher speed is providing a better quality of connection than having the large file transferred in a lower speed.

Therefore, a person with ordinary skill in the art would have been motivated to make the modification to Lemilainen to provide the best possible quality connection as the higher speed when transferring a relatively large size file.

14. Referring to claim 4, Lemilainen has taught an invention as described in claim 1, and further taught: setting means for setting an access point for each of said plurality of radio transmitting/receiving devices in accordance with a current position of a mobile unit (Col 9 lines 18-20, WLAN contains one or more cell, and each cell contains an access point); and wherein said selecting means selects a radio transmitting/ receiving device having a better data communication quality from said plurality of radio transmitting/ receiving devices as said one radio transmitting/ receiving device (Col 3 lines 30-33, and Col 10 lines 31-50).

Although Lemilainen has not explicitly taught selecting the higher speed when the data signal to be transmitted or received has a periodically transmitted data signal.

However, it is obvious to a person with ordinary skill in the art the time the invention was made to understand the best possible quality connection as taught by Lemilainen (Col 3 lines 30-33) could be the fastest speed available for transferring a periodically transmitted data signal in order to provide the best possible quality connection. Because having the data signal being transmitted with a higher speed is providing a better quality of connection than having the data signal transmitted in a lower speed.

Therefore, a person with ordinary skill in the art would have been motivated to make the modification to Lemilainen to provide the best possible quality connection as the higher speed when said data signal to be transmitted is a periodically transmitted data signal.

15. Referring to claim 5, Lemilainen has further taught wherein said selecting means selects a radio transmitting/ receiving device which is relatively available for communication at all times from said plurality of radio transmitting/ receiving devices instead of said radio transmitting/receiving device having a higher data communication speed, as said one radio transmitting/receiving device, when said periodically transmitted data signal cannot be transmitted for a predetermined time period (Col 3 lines 30-42).
16. Referring to claim 7, Lemilainen has taught an invention as described in claim 1, and has further taught wherein in a case that data transmission or reception is requested in accordance with a manipulation (Col 3 lines 9-24, Col 12 lines 57-64, changing location in order to change type of connection is viewed as manipulation.), said selecting means

Art Unit: 2155

selects a radio transmitting/ receiving device having a better data communication quality as said one radio transmitting/ receiving device when the radio transmitting/receiving device having a better quality of connection is available for communication within said plurality of radio transmitting/receiving devices (Col 10 lines 31-46, Col 3 lines 30-33), and said selecting means selects a radio transmitting/receiving device which is relatively available for communication at all times from said plurality of radio transmitting/receiving devices as said one radio transmitting/receiving device when said radio transmitting/receiving device originally having a better quality of connection is not available for the communication (Col 3 lines 30-38).

Although Lemilainen has not explicitly taught selecting the higher speed. However, it is obvious to a person with ordinary skill in the art the time the invention was made to understand the best possible quality connection as taught by Lemilainen (Col 3 lines 30-33) could be the fastest speed available for transferring transmission in order to provide the best possible quality connection. Because having a file being transferred with a higher speed is providing a better quality of connection than having the file transferred in a lower speed.

Therefore, a person with ordinary skill in the art would have been motivated to make the modification to Lemilainen to provide the best possible quality connection as the higher speed during communication.

17. Referring to claim 10, Lemilainen has further taught wherein said radio transmitting/receiving device which is relatively available for communication at all times

(Col 3 lines 33-37) within said plurality of radio transmitting/receiving devices is a mobile telephone (Col 5 lines 5-12).

18. Referring to claims 13 and 17, claims 13 and 17 encompasses the same scope of the invention as that of the claims 2 and 10. Therefore, the claims 13 and 17 are rejected for the same reason as the claims 2 and 10.
19. Claims 6, 9 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lemilainen in views of Willins et al., US Publication Number 2003/0021250, hereinafter Willins.
20. Referring to claim 6, Lemilainen has taught an invention as described in claim 4, and has further taught wherein said setting means sets a travel route from a current position to a destination of said mobile unit, and sets an access point for each of said plurality of radio transmitting /receiving devices (Col 9 lines 16-22.)

Lemilainen has not explicitly taught wherein the access point is located at the shortest distance from the current position of said mobile unit.

However, Willins has taught according to the 802.11 protocol, access point is located at the shortest distance from the current position of said mobile unit (page 1 [0011]).

It would have been obvious to a person with ordinary skill in the art at the time the invention was made to have Lemilainen's access point to be located at the shortest distance from the current position of said mobile unit as taught by Willins (page 1 [001]) because both of Lemilainen and Willins have taught inventions relating to wireless data

communications and both have mobile device operating under IEEE 802.11 protocol (Lemilainen, Col 4 lines 25.)

A person with ordinary skill in the art would have been motivated to make the modification to Lemilainen because Lemilainen's mobile is also using IEEE 802.11 protocol which the access point is located at the shortest distance from the current position of said mobile unit as taught by Willins (page 1 [0011]).

21. Referring to claim 9, Lemilainen has taught an invention as described in claim 2, however, Lemilainen has not taught wherein said radio transmitting/receiving device is a Bluetooth transmitter/receiver. However, Willins has explicitly taught the radio transmitting/receiving device can be a Bluetooth (Page 1 [0004].)

It would have been obvious to a person with ordinary skill in the art at the time the invention was made to have Lemilainen's mobile device to be implemented using the Bluetooth protocol because both of Lemilainen and Willins have said radio transmitting/receiving device as the wireless device and Bluetooth is one of the wireless protocol.

A person with ordinary skill in the art would have been motivated to make the modification to Lemilainen because Bluetooth is a well known for short-range radio links between mobile computers, mobile phones, digital cameras, and other portable devices.


22. Referring to claim 16, claim 16 encompass the same scope of the invention as that of the claim 9. Therefore, the claim 16 is rejected for the same reason as the claim 9.


Conclusion

23. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
24. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.
25. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Liang-che Alex Wang whose telephone number is (571)272-3992. The examiner can normally be reached on Monday thru Friday, 8:30 am to 5:00 pm.
26. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saleh Najjar can be reached on (571)272-4006. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.
27. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For

Art Unit: 2155

more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Liang-che Alex Wang 
August 4, 2005


SALEH NAJJAR
PRIMARY EXAMINER